JUSTICE TO THE LAND STATES.

SPEECH

OF

HON. CHARLES SUMNER,

OF

MASSACHUSETTS,

ON

THE IOWA LAND BILL.

IN THE SENATE OF THE UNITED STATES, JANUARY 27, 1852.

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SPEECH.

In the Senate, *January* 27, 1852. The Senate having under consideration the special order, being the unfinished business of the preceding day, the pending question being on the amendment offered by Mr. Underwood to the amendment reported by the Committee on Public Lands to the "bill granting the right of way and making a grant of land to the State of Iowa, in aid of the construction of certain railroads in said State"—

Mr. SUMNER said: This bill is important by itself, inasmuch as it promises to secure the building of a railroad at large cost, for a long distance, through a country not thickly settled, in a remote corner of the land. It is more important still as a precedent for a series of similar appropriations in other States. In this discussion, then, we have before us, at the same time, the special interests of the State of Iowa, traversed by this projected road, and also the great question of the administration of the public lands.

I have no inclination to go into these matters at length, even if I were able; but entertaining no doubt as to the requirements of policy and of justice in the present case, and in all like cases, seeing my way clearly before me by lights that cannot deceive, I hope in a few words to exhibit these requirements and to make this way manifest to others. And I am especially moved to do this by the tone of remarks which we often hear out of the Senate, and sometimes even here, begrudging these appropriations, and charging the particular States in which they are made with an undue absorption of the property of the Union. It is sometimes said—not in this body, I know—that "the West is stealing the public lands;" and the Senator from Virginia, [Mr. Hunter,] who expresses himself with a frankness and a moderation of manner worthy of regard, in discussing this very measure, distinctly said that "we are squandering away the public lands;" and he complained that such appropriations

were partial, "because very large amounts of land are distributed to those States in which they lie, while nothing is given to the old States." And the Senator from Kentucky, [Mr. UNDERWOOD,] taking up this strain, has dwelt at great length, and in every variety of expression, on the alleged partiality of the distribution.

Now, I know full well that the States in which these lands lie need no defender like myself. But, as a Senator from one of the old States, I desire thus early to declare distinctly my dissent from these views, and the reasons therefor. Beyond a general concern, that the public lands, of which the Union is now the almoner, the custodian and proprietor, should be administered freely, generously, bountifully, in such wise as most to promote their settlement, and to build upon them towns, cities, and States, the nurseries of future empire—beyond this concern which leads me to adopt gladly the proposition, in favor of actual settlers, of the Senator from Wisconsin, [Mr. WALKER,] I find a clear and special reason for supporting the measure now before the Senate, in an undeniable rule of justice to the States in which the lands lie.

Let me speak, then, for *justice* to the land States. And in doing so I wish to present an important, and, as it seems to me, decisive consideration—which has not been adduced thus far in this debate, nor do I know that it has been presented in any prior discussion—*founded on the exemption from taxation enjoyed by the National lands in the several States, and the unquestionable value of this franchise.* The subject naturally presents itself under two heads: *First*, the origin and nature of this franchise; and, *secondly*, its extent and value, after deducting therefrom all reservations and grants to the several States.

I. And now, in the *first* place, as to the origin and nature of the immunity enjoyed by the national domain in the several States.

The United States are the proprietors of large tracts of country within the municipal and legislative jurisdiction of States of the Union. These lands are not held directly by virtue of any original prerogative or eminent domain, by any right of conquest, occupancy, or discovery, but under acts of cession from the old States, in which the lands were situated, and from

foreign countries, recognised and confirmed in the various acts by which the different States have been constituted. The words determining this relation are found in the Ordinance of 1787. They are as follow: "The Legislatures of these districts or new States shall never interfere with *the primary disposal of the soil* by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to *bona fide* purchasers." This provision has been incorporated, as an article of compact, in the subsequent acts under which the new States have taken their place in the Union. It is the "primary disposal of the soil," without any incident of sovereignty, which is here secured.

Regarding the United States, then, as simple proprietors of these lands, under the jurisdiction of the States, would they not be liable, according to the discretion of the States, to the burdens of other proprietors, unless especially exempted therefrom? This exemption has been conceded. In the Ordinance of 1787, it is expressly declared that "no tax shall be imposed on land the property of the United States;" and this provision, like that already mentioned, is embodied in succeeding acts of Congress by which new States have been constituted. The fact that it was formally conceded and has been thus imbodied seems to denote that such concession was regarded as necessary to secure the desired immunity. Indeed, from the principles recognised in our jurisprudence, and particualrly by the Supreme Court, it is reasonable to infer that, without such express exemption, this whole amount of territory would be within the field of local taxation, liable, like the lands of other proprietors, to all customary burdens and incidents.

Thus, in an early case in Pennsylvania, it was decided that the purchase of land by the United States would not alone be sufficient to vest them with the jurisdiction, or to oust that of the State, without being accompanied or followed with the consent of the Legislature of the State. (See *Commonwealth of Pennsylvania vs. Young*, 1 *Kent's Comm.*, 431.) And it has been judicially declared by the late Mr. Justice Woodbury, in a well-considered case:

"Where the United States own land situated within the limits of particular States, and over which they have no cession of jurisdiction, for objects either special or general, little doubt

exists *that the rights and remedies in relation to it are usually such as apply to other landholders within the State.*"

After setting forth certain rights of the United States, the learned judge proceeds:

"All these rights exist in the United States for constitutional purposes, and without a special cession of jurisdiction; though it is admitted that the powers over the property and persons on such lands will, of course, remain in the States till such cession is made. Nothing passes without such a cession, except what is an incident to the title and purposes of the General Government."—*United States vs. Ames*, 1 *Woodbury and Minot R.*, 76.

The Supreme Court have given great eminence to the sovereign right of taxation in the States. They have said:

"Taxation is a sacred right, essential to the existence of Government—an incident of sovereignty. The right of legislation is coextensive with the incident, to attach it upon all persons and property within the jurisdiction of a State."—*Dobbins vs. Commissioners of Erie Co.*, 16 *Peters R.*, 447.

And again, the Court say in another case:

"However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the Legislature."—*Providence Bank vs. Pittman*, 4 *Peters R.*, 514.

And in the same case the Court, after declaring "that the taxing power is of vital importance, that it is essential to the existence of Government, that the relinquishment of such a power is never to be assumed," add, cautiously, that they will not say "that a State may not relinquish it—*that a consideration sufficiently valuable to induce a partial release of it may not exist.*"

While thus upholding the right of taxation as one of the precious attributes of sovereignty in the States, the Court, under the Constitution of the United States, have properly exempted from taxation the instruments and means of the Government; but they have limited the exemption to these instruments and means. Thus it has been expressly decided in a celebrated case, (*McCulloch vs. Maryland*, 4 *Wheaton*, 316,) that, while the Bank of the United States, being one of the necessary *instruments and means* to execute the sovereign powers of the nation,

was not liable to taxation, yet the real property of the Bank was thus liable in common with the other real property in a particular State.

Now, the lands held by the United States do not belong to the *instruments and means* necessary and proper to execute the sovereign powers of the nation. In this respect they clearly differ from fortifications, arsenals, and navy yards. They are strictly in the nature of *private property* of the nation, situated within the jurisdiction of States. In excusing them from taxation, our fathers acted unquestionably according to the suggestions of prudence, but also under the influence of precedent, derived *at that time* from the prerogatives of the British Crown. It was an early prerogative, transmitted from feudal days, when all taxes were in the nature of aids and subsidies to the monarch, that the property of the Crown, of every nature, should be exempt from taxation. *But mark the change.* This ancient feudal principle is not now the existing law of England. By the statute of 39 and 40 George III, cap. 38, passed twelve years after the Ordinance of 1787, the lands and tenements purchased by the Crown out of the privy purse or other moneys not appropriated to any public service, or which came to the King from his ancestors or private persons—in other words, lands and tenements in the nature of *private property*—are subjected to taxation, even while they belong to the Crown.

Thus the matter now stands. Lands belonging to the nation, which, it seems, even royal prerogative at this day, in England, cannot save from taxation, are in our country, under express provisions of compact, early established, exempted from this burden. Now, sir, I make no complaint of this; I do not suggest any change; nor do I hint any ground of legal title in the States. But I do confidently submit that in this peculiar, time-honored immunity, originally claimed by the nation, and conceded by the States within which the public lands lie, there is ample ground of equity, under which these States may now appeal to the nation for assistance out of these public lands.

When I listen to comparisons discrediting these States by the side of the old States; when I hear it said that they have been constant recipients of the national bounty; and when I catch those sharper terms of condemnation, by which they are characterized as "plunderers" and "robbers" and "pirates," I

am forced to inquire whether the nation has not already received from these States more than it has ever bestowed, even in its most liberal moods; whether, at this moment, the nation is not *equitably* the debtor to these States, and not these States the debtors to the nation. The answer is clear.

In order to estimate the extent of this *equity*—for I will call it by no stronger term—we must endeavor to understand the extent and value of the franchise or immunity conceded by the States.

II. And I am now brought to the *second* head of this inquiry; that is, the extent and value of the immunity from taxation enjoyed by the national domain, after deducting therefrom all reservations and grants to the several States. Authentic documents and facts place these beyond question.

From the official returns of the Land Office in January, 1849, [Exec. Doc. 2d session, 30th Cong., H. R. No. 12, p. 225,] it appears that the areas of the twelve land States—Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, Louisiana, Michigan, Arkansas, Wisconsin, Iowa, and Florida — embrace 392,579,200 acres. California was not at that time a State of the Union. Of this territory, only 289,961,954 acres had been, in pursuance of the laws of the United States, surveyed, proclaimed, and put into the market. In some of the recent States, more than a moiety of the whole domain had never been brought into this condition. It continued still unconscious of the surveyor's chain. Thus, in Wisconsin, out of a territory of more than thirty-four millions of acres, only a little more than thirteen millions had been proclaimed for sale; and in Iowa, the very State whose interests are now particularly in question, out of a territory of more than thirty-two millions of acres, only a little more than twelve millions had been proclaimed for sale. It is evident, therefore, that, in point of fact, the true extent of territory, belonging to the United States at any time, much exceeds the extent actually in the market; but since it may be said, that the lands not yet surveyed, proclaimed, and put into the market, though nominally under the jurisdiction of the State, must actually lie out of the sphere of their influence, so as not to derive any appreciable advantage from the local Governments, and, as I desire to hold this argument above every imputation of exaggeration—knowing full well that it can afford

to be under-stated—I shall forbear to take the larger sum as the basis of my estimates, but shall found them upon the extent of territory actually proclaimed for sale, from the beginning down to January, 1849, amounting to 289,961,954 acres.

All these lands thus proclaimed have been exempt from taxation. But since they were proclaimed at different periods, and also sold at different periods, so far as the same have been sold, it is necessary, in order to arrive at the value of this immunity, to ascertain what is the average period during which the lands, after being put into the market, have been in the possession of the United States. This we are able to do from the official returns of the Land Office. Here is a table, now before me, from which it appears that of the lands offered for sale during a period of thirty years, large quantities—in some cases more than half—were, at the expiration of the period, still on hand. Of the fourteen millions offered in Ohio during this period, more than two millions remained; while, of the nineteen millions offered in Missouri, more than twelve millions remained. Of all the lands offered during this period of *thirty* years, more than half were still unsold. And out of the above aggregate of all the lands proclaimed from the beginning down to January, 1849, notwithstanding the advancing tread of our thick-coming population, only 100,209,656 acres had been sold. Now, without further pursuing these details, I shall assume what cannot be questioned, as it is most clearly within the truth, that the lands proclaimed are not all sold till after a period of fifty years. This estimate will make the average period during which the lands, after being surveyed and proclaimed, are actually in the possession of the United States, and free from taxation, twenty-five years.

According to this estimate, 289,961,954 acres proclaimed for sale, have been absolutely free from taxation, during the space of twenty-five years, and yet during this whole period have, without the ordinary consideration therefor, enjoyed the protection of the State, with the advantages and increased value from highways, bridges, and school-houses, all of which are supported by the adjoining proprietors, under the laws of the State, without assistance of any kind from the United States.

Such is the extent of this immunity. But, in order to determine its precise value, it is necessary to advance a step further

and ascertain one other element; that is, the average annual tax on land in those States; for instance, on the land of other non-residents. There are no official documents within my knowledge by which this can be determined. But after inquiry of gentlemen, themselves landholders in these States, I have thought it might be placed, without chance of contradiction, at one cent an acre. Probably it is rather two or even three cents; but, desiring to keep within bounds, I call it merely one cent an acre. The annual tax on 289,761,954 acres, at the rate of one cent an acre, would be $2,809,619, and the sum total of this tax for twenty-five years would amount to $72,490,475, being the value of this immunity from taxation already enjoyed by the United States; or, if we call the annual tax two cents an acre instead of one cent, we have the enormous sum of $144,980,950, of which the United States may now be regarded as trustees in *equity* for the benefit of the land States.

But against this large sum I may be reminded of reservations and grants by the Nation to the different States in question. These, however, when examined, do not materially interfere with the result. From the official returns of the Land Office in 1848, [Executive Doc., Thirtieth Congress, second session, H. R. No. 18,] we learn the precise extent of these reservations and grants down to that period. Here is the exhibit:

		Acres.
Common schools		10,807,958
Universities		823,950
Seats of Government		50,860
Salines		422,325
Deaf and dumb asylums		45,440
Internal improvements	Per act of Sept. 4, 1841	4,169,439
	Roads, rivers, and canals	4,305,034
		20,625,006

This is all. In the whole aggregate, only a little more than twenty millions of acres have been granted to these States. The value of this sum total, if deducted from the estimated value of the franchise enjoyed by the Nation, will still leave a very large balance to the credit of the land States. Estimating the land at $1.25 an acre, all the reservations and grants will amount to no more than $25,788,257. Deducting this sum

from $72,490,475, and we have $40,702,518 to be entered to the credit of the land States, or, if we place the tax at two cents an acre, more than double this sum.

This result leaves the nation so largely in debt to the land States, that it becomes of small importance to scan closely the character of these grants and reservations, in order to determine whether in large part they have not been already satisfied by specific considerations on the part of the States. But the stress that, in the course of this debate, has been laid upon this bounty, leads me to go further. It appears, from an examination of the acts of Congress by which the land States were admitted into the Union, that a large portion of these reservations and grants was made on the express condition that the lands sold by the United States, under the jurisdiction of the States, *should remain exempt from any State tax for the space of five years after the sale*. This condition is particularly applicable to the appropriations for common schools, universities, seats of Government, and salines, amounting to 12,105,093 acres. It is also particularly applicable to another item, not mentioned before, which is known as the five per cent. fund, from the proceeds of the public lands, for the benefit of roads and canals, amounting in the whole to $3,242,069. These appropriations being made on specific considerations, faithfully performed by the States down to this day, may properly be excluded from our calculations. And this is a response to the Senator from Kentucky, [Mr. UNDERWOOD,] who dwelt so energetically on these appropriations, without seeming to be aware of the conditions on which they were granted.

That I may make this more intelligible, let me refer to the act for the admission of Indiana. After setting forth the five reservations and grants already mentioned, it proceeds:

"*And provided, always*, That the five foregoing provisions herein offered are on the condition that the convention of the said State shall provide by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the 1st day of December next, shall be, and remain, exempt from any tax laid by order of any authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale."

This clause does not stand by itself in the acts admitting the

more recent States, but is mixed with other conditions. I will not believe, however, that any discrimination can be made between particular land States, on the ground of a difference in their conditions which may properly be attributed to accidental circumstances. The provision just quoted is found substantially in the acts for the admission of Ohio, Missouri, Illinois, and Arkansas. So far as these States are concerned, it is a complete consideration, in the nature of satisfaction, for the reservations and grants enjoyed by them. It also helps to illustrate the value of the *permanent immunity* from taxation belonging to the United States, by exhibiting the concessions made by the United States to assure this franchise to certain moderate quantities of land during the brief space of five years only.

After the constant charges of squandering the public lands and of partiality to the land States, I think all will be astonished at the small amount to be entered on the debtor side, in the great account between the States and the National Government. This consists of grants for internal improvements, in the whole reaching to only eight millions four hundred and seventy-four thousand four hundred and seventy-three acres, which, at $1.25 an acre, will be $10,593,091. If this sum be deducted from the estimated value of the immunity from taxation already enjoyed by the United States, we shall still have *upwards of* $60,000,000 *surrendered by the land States to the nation;* or, if we call the annual tax two cents an acre, more than double this sum.

In these estimates I have grouped together all the land States. But, taking separate States, we shall find the same proportionate result. For instance, there is Ohio, with 16,770,984 acres proclaimed for sale down to January 1, 1849. Adopting the basis already employed, and assuming that these lands continued in the possession of the United States after being surveyed and proclaimed an average period of twenty-five years, and that the land tax was one cent an acre, we have $4,192,725 as the value of the immunity from taxation already enjoyed by the United States in Ohio. From this may be deducted the value of 1,181,134 acres, being grants to this State for internal improvements, at $1.25 per acre, equal to $1,476,367, leaving upwards of two millions—nearly three millions—of dollars yielded by this State to the Nation.

Take another State—Missouri. It appears that, down to January, 1849, 39,685,609 acres had been proclaimed for sale in this State. Assuming again the basis already employed, and we have $9,908,900 as the value of the immunity from taxation already enjoyed by the United States in Missouri. From this may be deducted the value of 500,000 acres, granted to this State for internal improvements, which, at $1.25 an acre, will amount to $625,000, leaving upwards of nine millions of dollars thus yielded by this State to the Nation.

I might in this way proceed with all the land States individually; but enough has been done to repel the charges against them, and to elucidate their *peculiar equity* in the premises. On the one side, they have received little—very little—from the nation; while, on the other side, the nation, by every consideration of equity, is largely indebted to them. This obligation of itself constitutes a fund to which the land States may properly resort for assistance in their works of internal improvement, and Congress will show an indifference to the reasonable demands of these States, should it fail to deal with them, munificently—in some sort, according to the simple measure of advantage which the Nation has already so largely enjoyed at their hands.

Against these clear and well-supported merits of the land States, the old States can present small claims to consideration. They have waived no right of taxation over lands within their acknowledged jurisdiction; they have made no valuable concessions; they have yielded up no costly franchise. It remains, then, that, with candor and justice, they should recognise the superior—I will not say exclusive—claims of the States within whose borders and under the protection of whose laws the national domain is found.

Thus much for what I have to say in favor of this bill, on the ground of *justice* to the States in which the lands lie. If this argument did not seem sufficiently conclusive to render any further discussion superfluous, at least from me, I might go forward, and show that the true interests of the whole country—of every State in the Union, as of Iowa itself—are happily coincident with this claim of justice.

It will readily occur to all, that the whole country will gain

by the increased value of the lands still retained and benefited by the proposed road. But this advantage, though not unimportant, is trivial by the side of the grander gains—commercially, politically, socially, and morally—which will necessarily accrue from the opening of a new communication, by which the territory beyond the Mississippi will be brought into connection with the Atlantic seaboard, and by which the distant post of Council Bluffs will become a suburb of Washington. It would be difficult to exaggerate the influence of roads as means of civilization. This, at least, may be said: Where roads are not, civilization cannot be; and civilization advances as roads are extended. By these, religion and knowledge are diffused; intercourse of all kinds is promoted; the producer, the manufacturer, and the consumer, are all brought nearer together; commerce is quickened; markets are opened; property, wherever touched by these lines, is changed, as by a magic rod, into new values; and the great current of travel, like that stream of classic fable, or one of the rivers of our own California, hurries in a channel of golden sand. The roads, together with the laws, of ancient Rome, are now better remembered than her victories. The Flaminian and Appian ways—once trod by returning proconsuls and tributary kings—still remain as beneficent representatives of her departed grandeur. Under God, the road and the schoolmaster are the two chief agents of human improvement. The education begun by the schoolmaster is expanded, liberalized, and completed, by intercourse with the world; and this intercourse finds new opportunities and inducements in every road that is built.

Our country has already done much in this regard. Through a remarkable line of steam communications, chiefly by railroad, its whole population is now, or will be soon, brought close to the borders of Iowa. The cities of the Southern seaboard—Charleston, Savannah, and Mobile—are already stretching their lines in this direction, soon to be completed conductors; while the traveller from all the principal points of the Northern seaboard—from Portland, Boston, Providence, New York, Philadelphia, Baltimore, and Washington—now passes without impediment to this remote region, traversing a territory of unexampled resources—at once a magazine and a granary—the largest coal-field, and at the same time the largest

field, of the known globe—winding his way among churches and school-houses, among forests and gardens, by villages, towns, and cities, along the sea, along rivers and lakes, with a speed which may recall the gallop of the ghostly horseman in the ballad:

"Fled past on right and left how fast
Each forest, grove, and bower!
On right and left fled past how fast
Each city, town, and tower!

"Tramp! tramp! along the land they speed,
Splash! splash! along the sea."

On the banks of the Mississippi he is now arrested. The proposed road in Iowa will bear the adventurer yet further, to the banks of the Missouri; and this distant giant stream, mightiest of the earth, leaping from its sources in the Rocky Mountains, will be clasped with the Atlantic in the same iron bracelet. In all this I see not only further opportunities for commerce, but a new extension to civilization and increased strength to our National Union.

A heathen poet, while picturing the golden age without long lines of road, has ignorantly indicated this circumstance as creditable to that imaginary period in contrast with his own. "How well," exclaimed the youthful Tibullus, "they lived while Saturn ruled—*before the earth was opened by long ways:*"

"Quam bene Saturno vivebant rege: priusquam
Tellus *in longas est patefacta vias.*"

But the true Golden Age is before us, not behind us; and one of its tokens will be the completion of those *long ways*, by which villages, towns, counties, States, provinces, nations, are all to be associated and knit together in a fellowship that can never be broken.